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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 NANCY BESS,

9 Plaintiff,

v.

10 OCWEN LOAN SERVICING, LLC,

11 Defendant.

CASE NO. C15-5020

ORDER REQUESTING  
SUPPLEMENTAL JOINT STATUS  
REPORT OR BRIEFING

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13 This matter comes before the Court on the parties' joint status report, filed April  
14 24, 2018. Dkt. 45.

15 The parties' joint status report reveals a dispute that should be resolved promptly  
16 regarding the formulation of a phased discovery plan. Specifically, Plaintiff argues that a  
17 discovery plan should be implemented in a manner in which the precertification phase  
18 includes a class list that identifies all members of the putative class and allows broad  
19 discovery into all complaints made during the class periods, all complaints by members  
20 of the putative class, and all work orders completed (and relevant information about such  
21 work) during the class period. *See* Dkt. 45 at 8–9. Plaintiff also argues that such  
22 precertification discovery should also include a list of all Defendant's vendors and

1 clients, a representative sample of agreements and contracts with those clients and  
2 vendors, all documents pertaining to Defendant's use of vendors who were ordered to  
3 complete property preservation actions, as well as common policies and procedures  
4 governing vendor conduct and relating to property preservation activities. *Id.*

5 On the other hand, Defendant argues that Plaintiff has not pled any actual class  
6 claims in her operative complaint and that she is therefore not entitled to discovery  
7 related to class certification. Dkt. 45 at 3–4, 10. Alternatively, Defendant argues that the  
8 precertification phase should “be limited to discovery related to the named Plaintiff’s  
9 individual claims and class certifications issues” and that Plaintiff’s proposed plan is too  
10 broad in its precertification phase. Dkt. 45 at 10. The Court rejects Defendant’s first  
11 argument that no allegations pertaining to class claims have been pled. The operative  
12 complaint plainly alleges that:

13 [A]ll Plaintiffs own or owned real property in Washington State; subject to  
14 a loan owned or serviced by Ocwen; who, prior to completion of any  
15 judicial or non-judicial foreclosure, and without any express  
16 contemporaneous consent or permission of the Court, had their property  
entered upon by Ocwen and/or its agents; had some form of property  
preservation service performed upon their property; and/or were charged a  
fee for property preservation services.

17 Dkt. 23 at 4. While the operative complaint continues to describe in far more precise  
18 detail the alleged unlawful actions taken in regards to Plaintiff’s loan, deed of trust, and  
19 property, it is further alleged that all such “actions and inactions were part of Ocwen’s  
20 and/or its agents’ pattern or general course of conduct.” *Id.* at 9. It is abundantly clear that  
21 the operative complaint asserts all of its causes of action on behalf of the proposed class.  
22

1 Defendant's second argument regarding Plaintiff's proposed discovery plan is  
2 more persuasive. Specifically, Defendant contends that Plaintiff's proposed  
3 precertification stage would improperly include "a class list identifying all putative class  
4 members and complaints/logs of complaints made by members of the putative class."  
5 Dkt. 45 at 11. The Court agrees that the expansive discovery Plaintiff requests regarding  
6 *all* complaints and logs of complaints made by members of the expansive class is  
7 unnecessarily burdensome for questions of class certification, but rather is best reserved  
8 for determining the merits of class claims if a class is certified. This is also true for  
9 Plaintiff's requests regarding *all* documents pertaining to Defendant's use of vendors in  
10 preservation actions, *all* work orders completed during the class period, and *all* class  
11 members' contact information. But that does not mean that no discovery should be  
12 granted into such evidence during the precertification stage. In fact, such information  
13 could be highly relevant in determining class size, typicality, and predominance.  
14 Unfortunately, Defendant offers no alternative explanation as to what specific discovery  
15 should be allowed during the precertification phase.

16 The Court is inclined to find that the best route for proceeding is to approve a  
17 discovery plan with a precertification phase that mirrors Plaintiff's proposed plan with a  
18 less expansive approach. For instance, the Court would likely approve discovery of a  
19 class list identifying all members of the putative class, but would not require that the list  
20 contain all members' contact information, work order information, and complaints.  
21 Instead, the list of names would be used to generate an appropriate representative sample,  
22 after which discovery would be allowed into this sample's contact information, work

1 orders, and complaints. Under this procedure, after the parties reached an agreement on  
2 an appropriate sample size, Plaintiff would randomly select that number of names from  
3 the class list. Depending on the number of vendors, the Court might consider a similar  
4 procedure for discovery into a vendor list and “documents relating to Ocwen’s hiring,  
5 training, oversight, communications with evaluations of, termination or demotion of  
6 vendors who were ordered to complete property preservation actions in Washington  
7 . . . .” Dkt. 45 at 9.

8 In light of the forgoing, it is the Court’s preference that the parties should meet,  
9 confer, and reach an agreement on a stipulated discovery plan. Nonetheless, should the  
10 parties fail to reach an agreement, the Court would request that the parties submit  
11 supplemental briefing regarding how discovery should proceed in order to best assist  
12 them in formulating an appropriate discovery plan. For instance, it is unclear from  
13 Plaintiff’s allegations how large the proposed class or list of vendors are estimated to be  
14 or how the parties could arrive at an appropriate representative sample. Plaintiff has only  
15 vaguely suggested that the proposed class would include “thousands of other  
16 Washingtonians.” Dkt. 45 at 2. Similarly, Defendant has not offered any substantive  
17 explanation as to why any particular aspect of Plaintiff’s proposed precertification phase  
18 would result in unduly burdensome discovery, or what specific discovery should be  
19 allowed under its own proposal.

20 Therefore, the Court orders that the parties shall submit, no later than May 25,  
21 2018, either (1) a **supplemental joint status report** with a stipulated phased discovery  
22 plan, or (2) **supplemental briefing** with disputed proposed discovery plans. Should the

1 parties submit supplemental briefing rather than a stipulated plan, they may submit  
2 additional response briefs no later than June 1, 2018.

3 **IT IS SO ORDERED.**

4 Dated this 10th day of May, 2018.

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7 BENJAMIN H. SETTLE  
8 United States District Judge  
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